In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1169

G. P. D., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

This case presents the same basic question as that involved in *National Labor Relations Board v. American Cable Systems, Inc.*, No. 737, 1970 Term, certiorari denied, December 14, 1970. The issue is whether the Board may properly disregard the effect of post-election employee turnover in determining whether an employer's preelection unfair labor practices preclude the holding of a fair representation election and warrant a bargaining order.[1] In *Ameri-*

[1] In *American Cable*, there was also the fact that the management official who had committed the unfair labor practices had subsequently left the company.

can Cable, one panel of the Fifth Circuit answered this question negatively (427 F. 2d 446);[2] in this case, on different facts, a divided panel of the Sixth Circuit answered it affirmatively (Pet. 2a-9a). The Board sought certiorari in *American Cable*; it believes that the court of appeals correctly decided this case. While it agrees with petitioner that the conflict warrants resolution by this Court, that conflict was brought to the Court's attention in *American Cable*, No. 737, 1970 Term, Pet. 9, 13. The same considerations which led the Court to deny the Board's petition in *American Cable* presumably would also lead it to deny the petition here. See also *National Labor Relations Board* v. *Clark's Gamble Corporation*, No. 265, 1970 Term, certiorari denied, October 19, 1970. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

JANUARY 1971

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[2] But see *American Art Industries, Inc.* v. *National Labor Relations Board*, No. 995, 1970 Term, pending on petition for a writ of certiorari.

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